



**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is an interior design business. It seeks to employ the beneficiary permanently in the United States as a market research analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as follows:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In denying the petition the Director found that [REDACTED] – the institution that awarded the beneficiary a “Master of Arts in Business Administration” in 2000 – is not recognized as an accredited institution by the U.S. Department of Education (DoEd). Therefore, the beneficiary's degree from [REDACTED] did not meet the educational requirements on the ETA Form 9089. The Director also found that while the beneficiary has a baccalaureate degree or its foreign equivalent (a bachelor of science in engineering from a university in Taiwan), the record does not establish that the beneficiary has sufficient qualifying experience for her degree and experience to be considered equivalent to a master's degree.

On appeal, counsel points out that [REDACTED] has been granted institutional approval under California state law, as well as by the Department of Homeland Security (DHS) to enroll foreign students. According to counsel, therefore, an MBA from [REDACTED] should be regarded as an “advanced degree” under 8 C.F.R. § 204.5(k)(2). In addition, counsel asserts that the beneficiary has the equivalent of a master's degree, in accordance with the foregoing regulation, in the form of a baccalaureate degree and five years of progressive experience in the specialty

### **Factual and Procedural History**

The immigrant visa petition, Form I-140, was filed on November 7, 2007. Documentation submitted with the petition included academic records from [REDACTED] showing that the beneficiary was awarded a “Master of Arts in Business Administration” (MBA) from that institution on December 16, 2000, after completion of a five-semester course of study.

In a Request for Evidence (RFE) issued on March 21, 2008, the Director advised the petitioner to submit evidence that [REDACTED] is an accredited institution. The Director also requested evidence of the beneficiary's underlying bachelor's degree in business administration, or foreign equivalent degree. Furthermore, in case the beneficiary's MBA was not from an accredited university, the Director requested evidence that the beneficiary had five years of progressively responsible, post-baccalaureate experience in the specialty to show that her bachelor's degree and experience are equivalent to an advanced degree.

In response to the RFE counsel for the petitioner stated that [REDACTED] was granted institutional approval by the State of California's Bureau for Private Postsecondary and Vocational Education (BPPVE) in 1981, in accordance with the provisions of California Education Code (Cal. Ed. Code) 94900.<sup>1</sup> Counsel stated that [REDACTED] was also approved by DHS to enroll foreign students, and submitted evidence of the beneficiary's enrollment in [REDACTED] four-year doctoral program in business, management, and marketing from 2007 to 2011. Counsel indicated that [REDACTED] is a member of various educational organizations including the California Business Education Association (CBEA), the Consortium of American Schools, Colleges, and Universities (CASCUS), the Council for Adult and Experiential Learning (CAEL), and the American Association for School Personnel Administrators (AASPA). In addition, the beneficiary's transcript was submitted from [REDACTED] in [REDACTED], showing that she received a Bachelor of Science in Engineering in June 1986 upon completion of a four-year course of study.

The Director denied the petition on July 11, 2008, finding that [REDACTED] is not on the list of accredited institutions maintained by the DoEd's Office of Postsecondary Education.. The Director concluded that the beneficiary's "MBA" from [REDACTED] did not qualify her for classification as an advanced degree professional. Nor did USCIS confer accreditation on [REDACTED] when it approved that institution's enrollment of foreign students. Finally, the Director determined that the academic record from [REDACTED] in [REDACTED] established that the beneficiary had the foreign equivalent of a U.S. bachelor's degree, but that no evidence had been submitted to show that the beneficiary had five or more years of "qualifying experience" to constitute equivalence to an advanced degree.

On appeal counsel reiterates his contention that the beneficiary's MBA should be given credence because [REDACTED] has been granted institutional approval by the State of California. As evidence thereof counsel submits photocopies of two approval documents for [REDACTED] on the BPPVE's letterhead, listing the approved degree programs, stating that the MBA program was first approved on October 1, 1982 and confirming that it continued to be approved as of June 4, 2003. Counsel also submits an earlier approval document for [REDACTED], dated January 1, 1991, which defined "Approval" as follows:

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<sup>1</sup> The California Education Code was amended, and the BPPVE replaced by the Bureau for Private Postsecondary Education (BPPE), pursuant to the Private Postsecondary Education Act of 2009, Assembly Bill (AB) 48, enacting Title 3, Division 10, Part 59, Chapter 8, of the Cal. Ed. Code, signed into law by the Governor of California on October 11, 2009, effective January 1, 2010.

"Approval" or "approval to operate" means that the council has determined and certified that an institution meets the minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of student's achievement prior to, during, and at the end of its program.

Counsel also submits documentary evidence – including an affidavit from the beneficiary, a letter from a former employer, and a series of W-2 Forms (Wage and Tax Statements) – that the beneficiary was employed as a business project director for [REDACTED] (location unstated) from October 1997 to October 2000 and as a market research analyst for [REDACTED] from November 2000 to December 2004.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record.

The issues on appeal are twofold:

- Whether the beneficiary's educational credential from [REDACTED], or her bachelor's degree in engineering from a [REDACTED] and subsequent work experience, make her eligible for classification as an "advanced degree professional" under section 203(b)(2) of the Act.
- Whether the beneficiary's educational credential from [REDACTED] or her bachelor's degree in engineering from a [REDACTED] and subsequent work experience, meet the educational requirement set forth on the ETA Form 9089 (labor certification) to qualify her for the job of market research analyst.

### **Eligibility for the Classification Sought**

The ETA Form 9089 in this case was accepted for processing by the DOL on July 31, 2007, and certified by the DOL on August 8, 2007. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9<sup>th</sup> Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that “[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor’s degree with at least five years progressive experience in the professions.” H.R. Conf. Rep. No. 955, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien “must have a bachelor’s degree” when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency’s previous treatment of a “bachelor’s degree” under the Act when the new classification was enacted and did not intend to alter the agency’s interpretation of that term. See *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). See also 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor’s degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (INS, or the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because

neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."<sup>2</sup> In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). See 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).<sup>3</sup>

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<sup>2</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

<sup>3</sup> Cf. 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar*

While the regulatory language of 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an “advanced degree,” that requirement is implicit in the regulation. As stated by the DoEd on its website:

The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for the recognition of accrediting agencies, as published in the *Federal Register* . . . . The Secretary . . . makes the final determination regarding recognition.

The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.

. . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.

. . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

[www.ed.gov/print/admins/finaid/accred/accreditation.html](http://www.ed.gov/print/admins/finaid/accred/accreditation.html) (accessed June 7, 2012).

The DoEd's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs. Outside the federal sphere, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

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award from a college, university, school or other institution of learning relating to the area of exceptional ability”).

Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions . . . .

CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.

Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community . . . . The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

[www.chea.org/pdf/Recognition\\_Policy-June\\_28\\_2010-FINAL.pdf](http://www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf) (accessed June 7, 2012).

The DoEd and CHEA recognize six regional associations – covering the entire United States and its outlying possessions – that accredit U.S. colleges and universities. One of these is the Western Association of Schools and Colleges (WASC), Accrediting Commission for Senior Colleges and Universities – whose geographical scope includes California, Hawaii, and other U.S. possessions in the Pacific, and whose membership represents a broad range of public and private schools in the region and other education-related organizations. The WASC website includes a list of all the higher educational institutions in its jurisdiction that are either accredited or candidates for accreditation.

\_\_\_\_\_ does not appear on that list. See [www.wascenior.org/apps/institutions/](http://www.wascenior.org/apps/institutions/) (accessed June 7, 2012). Thus, \_\_\_\_\_ has not been accredited by the applicable accrediting agency recognized by the DoEd and CHEA – the WASC’s Accrediting Commission for Senior Colleges and Universities – and there is no evidence that \_\_\_\_\_ has requested accreditation by that agency.

The State of California acknowledges the qualitative difference between accredited and unaccredited educational institutions. The California Postsecondary Education Commission (CPEC), the state’s planning and coordinating body for higher education from 1974 to 2011,<sup>4</sup> includes the following language regarding the “benefits associated with accreditation” on its website:

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<sup>4</sup> The CPEC ceased operations on November 18, 2011, after its funding was eliminated. See <http://www.cpec.ca.gov/> (accessed June 8, 2012) and associated Press Release.

Both the federal government and the states use accreditation as an indication of the quality of education offered by American schools and colleges.

At the federal level, colleges and universities must be accredited by an agency recognized by the United States Secretary of Education in order for it or its students to receive federal funds.

At the state level, California allows colleges and universities that are accredited by the Western Association of Schools and Colleges (the recognized regional accrediting agency for California) to grant degrees without the review and approval of the Bureau for Private Postsecondary Education (BPPE). A list of approved institutions is available at the California Bureau for Private Postsecondary Education (BPPE).

In some states, it can be illegal to use a degree from an institution that is not accredited by a nationally recognized accrediting agency, unless approved by the state licensing agency. This helps prevent the possibility of fraud . . . .

[www.cpec.ca.gov/CollegeGuide/Accreditation.asp](http://www.cpec.ca.gov/CollegeGuide/Accreditation.asp) (accessed June 8, 2012).

The CPEC website goes on to warn about state laws in Illinois, Indiana, Maine, Michigan, Nevada, New Jersey, North Dakota, Oregon, Texas, and Washington regarding degree/diploma mills. *See id.*

The qualitative difference between accredited and unaccredited educational institutions, acknowledged by the CPEC, is also recognized by the State of California in its Education Code. Cal. Ed. Code section 94813 defines “accredited” as follows:

"Accredited" means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.

With respect to unaccredited institutions that are approved to operate in California, Cal. Ed. Code section 94817.5 provides the following basic definition:

"Approved to operate" or "approved" means that an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs.

Cal. Ed. Code section 94887 sets the following guideline for the BPPE’s grant of an approval to operate:

An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau [BPPE], and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards . . . .

As the foregoing authorities indicate, accreditation of a college or university by a regional accrediting body recognized by the DoEd and CHEA is a badge of quality. As stated on their respective websites, accreditation is intended “to assure academic quality and accountability” (CHEA) and to provide “a reasonable assurance of quality and acceptance by employers of . . . degrees” awarded by the accredited institutions (DoEd). Moreover, the imprimatur of a regional accrediting agency guarantees that a school’s degrees will be recognized and honored nationwide. By comparison, an approval to operate by California’s BPPE is a lower level endorsement that an educational institution “has the capacity to satisfy the minimum operating standards” (Cal. Ed. Code section 94887) with no guarantee that degrees awarded by that school in California will be recognized and honored nationwide.

The Immigration and Nationality Act is a federal statute with nationwide application. The regulations implementing the Act – including 8 C.F.R. § 204.5(k)(2) defining “advanced degree” for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining “professional” for the purposes of section 203(b)(3) of the Act – also have nationwide application. As defined in 8 C.F.R. § 204.5(k)(2), an “advanced degree” includes “any **United States academic or professional degree** . . . above that of baccalaureate” (or a foreign equivalent degree), “[a] **United States baccalaureate degree**” (or a foreign equivalent degree) and five years of specialized experience (considered equivalent to a master’s degree), and “a **United States doctorate**” (or a foreign equivalent degree). (Emphases added.) Similarly, “professional” is defined in 8 C.F.R. § 204.5(l)(2) as “a qualified alien who holds at least a **United States baccalaureate degree**” (or a foreign equivalent degree). (Emphasis added.) The repeated usage of the modifier “United States” to describe the different levels of (non-foreign) degrees makes clear the intention of the rulemakers that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis. The only way to assure nationwide recognition for its degrees is for the educational institution to secure accreditation by a regional accrediting agency approved by the DoEd and CHEA.

For an educational institution in California, the regional accrediting agency is WASC’s Accrediting Commission for Senior Colleges and Universities. As previously discussed, the school that issued the beneficiary’s degree – [REDACTED] – is not on the WASC list of accredited institutions. Nor is [REDACTED] listed as a candidate for accreditation. Accordingly, the beneficiary’s “Master of Arts in Business Administration” from [REDACTED] cannot be deemed to have nationwide recognition. Therefore, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

This conclusion squares with federal case law. In *Philip Tang v. District Director of the U.S. Immigration and Naturalization Service (Tang v. INS)*, 298 F. Supp. 413 (D.C. Cal. 1969), the district court agreed with the INS that a bachelor of science in electronic engineering from [REDACTED], an institution that was not accredited by the WASC, did not entitle the alien to a third preference visa because his degree was not equivalent to a bachelor’s degree from

an accredited college or university in the United States. *See* 298 F.Supp. at 417, 419.<sup>5</sup> The district court's decision was affirmed without further discussion by the U.S. Court of Appeals for the Ninth Circuit in a *per curiam* ruling. *See Tang v. INS*, 433 F.2d 1311 (9<sup>th</sup> Cir. 1970).

In accordance with the foregoing analysis, the AAO determines that the beneficiary is not eligible for preference visa classification as an advanced degree professional under section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k)(2) based on her "MBA" from [REDACTED]

As for counsel's alternate contention that the beneficiary has the equivalent of master's degree, as defined in 8 C.F.R. § 204.5(k)(2), by virtue of her bachelor's degree and at least five years of progressively responsible experience in the specialty, the record does not support this claim.

As previously mentioned, the beneficiary earned a bachelor of science in engineering from [REDACTED] in [REDACTED] upon completion of a four-year degree program in June 1986. According to the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a bachelor's degree in [REDACTED] is comparable to a bachelor's degree from a U.S. college or university. In accord with this EDGE rating, the AAO finds that the beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree, within the meaning of 8 C.F.R. § 204.5(k)(2). The degree was in the field of engineering, however, not business administration. There is no evidence in the record that the beneficiary has any experience in the field of engineering. Thus, she does not have the five years of progressive experience in the specialty required in 8 C.F.R. § 204.5(k)(2) for her baccalaureate degree in engineering to meet the definition of an advanced degree.

Even if the beneficiary's baccalaureate degree was in the field of business administration, the record does not show that she had at least five years of progressive experience in the specialty. The following documentation is the only evidence in the record of the beneficiary's employment:

Photocopies of the beneficiary's Wage and Tax Statements (Forms W-2) for the years 1997-2004, showing that she was employed by [REDACTED] in Los Angeles, California, in the years 1997-1999, and by [REDACTED] in Fremont, California, in the years 2000-2004.

A statement by the beneficiary, dated August 6, 2008, that she worked for [REDACTED] as business project director from October 1997 to October 2000 and for [REDACTED] as a market research analyst from November 2000 to December 2004.

A letter from the Human Resources (HR) Manager of [REDACTED] dated July 24, 2008, stating that the beneficiary was employed by the company as a marketing research analyst from November 10, 2000 to December 23, 2004.

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<sup>5</sup> The same decision was made by another judge in this court in *Yau v. INS*, 293 F.Supp. 717 (C.D. Cal. 1968), which also involved a bachelor's degree in electrical engineering from PSU.

While the W-2 forms confirm that the beneficiary was employed by [REDACTED] and [REDACTED] during the years 1997-2004, they do not reveal her job titles or the duties she performed at those jobs. Thus, the W-2 forms do not establish that the beneficiary had at least five years of progressive experience. As for the letter from the HR Manager of [REDACTED], the regulation at 8 C.F.R. § 204.5(g)(1), sets forth the following substantive requirements:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The letter from [REDACTED] does not meet the regulatory requirements because it does not specifically describe the duties performed by the beneficiary. While indicating generally that she worked as a market research analyst, it provides no information whatsoever about what she actually did on the job – such as specific projects, daily tasks, and the like. Even if the letter contained the requisite substance about progressive experience, the beneficiary's employment at [REDACTED] covered barely over four years – not the five needed to elevate a baccalaureate degree associated with that experience to a master's degree equivalent under 8 C.F.R. § 204.5(k)(2). No letter has been submitted from [REDACTED] the beneficiary explains, because the company has gone out of business. Thus, there is no documentary evidence from [REDACTED] as to what duties the beneficiary performed during her employment with the company. Even if the AAO were to accept the beneficiary's own statement as credible evidence that she was employed as a business project director, the beneficiary has provided no specific information about what projects she worked on and the duties she performed on the job. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In accordance with the foregoing analysis, the AAO determines that the beneficiary is not eligible for preference visa classification as an advanced degree professional under section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k)(2) based on a bachelor's degree and five years of progressive experience in the specialty because the record does not establish that she had the requisite experience, either in engineering (consistent with her baccalaureate degree) or in business.

Since the beneficiary is not eligible for classification as an advanced degree professional based on either her "MBA" from [REDACTED] or her bachelor of science in engineering from [REDACTED] and five years of progressive experience in the specialty, the petition cannot be approved.

### **Qualifications for the Job Offered**

Relying in part on *Madany*, 696 F.2d at 1008, the Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9<sup>th</sup> Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification – "Job Opportunity Information" – describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language of the alien employment certification application form*. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this case, Part H, lines 4 and 4-B of the labor certification state that the minimum educational requirement to qualify for the proffered position is a master's degree in business administration.

Line 9 states that a "foreign educational equivalent" is acceptable. Lines 5 and 6 state that no training or experience in the job offered is required. Moreover, line 7 states that no alternate combination of education and experience is acceptable. In short, the job requires a master's degree in business administration or an equivalent foreign degree.

The beneficiary does not meet this requirement. As previously discussed, the beneficiary's degree from [REDACTED] though called a "Master of Arts in Business Administration," does not qualify as a U.S. master's degree in business administration under the "advanced degree" definition of 8 C.F.R. § 204.5(k)(2) because it was not awarded by an educational institution that has been accredited by a regional accrediting agency recognized by the DoEd and CHEA. Nor does the beneficiary have a foreign educational equivalent to a master's degree in business administration. Since she does not fulfill the educational requirements in Part H of the labor certification, the beneficiary does not qualify for the job offered. For this reason as well, the petition cannot be approved.

The beneficiary could not qualify for the job offered based on her bachelor's degree and five years of experience – notwithstanding the Director's introduction of this issue in his RFE and discussion of the issue in his decision – because the labor certification specifically stated that no alternate combination of education and experience was acceptable. Even if the ETA Form 9089 had allowed a bachelor's degree and five years of progressive experience in the specialty to substitute for an MBA, the beneficiary would not have met such requirements because her baccalaureate degree was in engineering, not business administration, and the documentation of record does not establish that she had at least five years of progressive experience in the field of business.

Furthermore, the work experience claimed in the labor certification is inconsistent with the work experience documented in the record. In the ETA Form 9089 two prior jobs are listed for the beneficiary: (1) market research analyst for [REDACTED] in Fremont, California, from June 2005 to June 2007, and (2) market research analyst for [REDACTED] in Fremont, California, from October 2002 to June 2005. No evidence has been submitted of the beneficiary's most recent job with [REDACTED]. The indicated dates of the job with [REDACTED] conflict with previously submitted documentation indicating that the beneficiary worked for [REDACTED] from November 2000 to December 2004. Finally, the ETA Form 9089 does not list the job with [REDACTED] from 1997 to 2000.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No such evidence has been submitted to resolve the inconsistencies identified above. Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *Id.*

Thus, the beneficiary's bachelor's degree and work experience provide no basis for a finding that the beneficiary is qualified for the job offered – market research analyst.

**Conclusion**

The beneficiary does not have an “advanced degree” within the meaning of 8 C.F.R. § 204.5(k)(2), and thus is not eligible for preference visa classification under section 203(b)(2) of the Act. Nor does the beneficiary meet the educational requirements on the labor certification to qualify for the job offered.

For the reasons stated above, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.